

HAROLD L. MICHAELSON

IBLA 82-718

Decided June 17, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring an unpatented mining claim abandoned and void. I MC 15292.

Affirmed.

1. Administrative Procedure: Burden of Proof -- Evidence: Burden of Proof -- Evidence: Presumptions -- Evidence: Sufficiency -- Mining Claims: Abandonment

There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was received to show that it was, in fact, received timely by BLM. Appellant in this case has not carried his burden of proof by showing that BLM received the documents.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement

is mandatory and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

3. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Harold L. Michaelson, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Harold L. Michaelson appeals the March 18, 1982, decision of the Idaho State Office, Bureau of Land Management (BLM), which declared the unpatented Arrowhead lode mining claim, I MC 15292, abandoned and void because no proof of labor or notice of intent to hold was filed with BLM in 1980 as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

The claim was located August 17, 1976, and a copy of the notice of location and evidence of assessment work were filed with BLM July 29, 1979.

Appellant asserts he mailed the 1980 proof of labor to BLM in September 1980, after recording it July 30, 1980, in Idaho County, Idaho. The document was transmitted by ordinary mail. A copy of the recorded proof was submitted with the notice of appeal. Appellant states he has tried to comply with all the statutory and regulatory requirements since he located the claim, and that he has not abandoned it.

[1] Various presumptions come into play when an appellant alleges timely transmittal of an instrument but BLM has no record of its receipt. On one hand, there is a presumption of regularity which supports the official acts of public officers in the proper discharge of their duties. See, e.g., Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); Bernard S. Storper, 60 IBLA 67 (1981); Phillips Petroleum Co., 38 IBLA 344 (1979). On the other hand, there is the presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. See,

e.g., Donald E. Jordan, 35 IBLA 290 (1978). When these two presumptions have come into conflict, the Board has generally accorded greater weight to the former. See David F. Owen, 31 IBLA 24 (1977). We believe that public policy considerations dictate that greater weight be given to the presumption of regularity than is accorded the presumption that mail, duly addressed, stamped and deposited, is delivered.

Thus, where BLM states it did not receive the instrument, the burden is on the appellant to show that the instrument was, in fact, received timely by BLM. See H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981).

Appellant's unsupported statement that he did transmit the 1979 proof of labor and notice of intent to hold to BLM does not overcome the presumption of regularity. It is the receipt of the instrument which is critical, since filing is not accomplished until the document is received. See 43 CFR 1821.2-2(f).

[2] Section 314 of FLPMA requires the owner of unpatented mining claims located prior to October 21, 1976, in addition to filing with BLM a copy of the official record of the notice of location, to file with BLM evidence of the assessment work performed on the claim or a notice of intention to hold the claim within 3 years after the date of the Act, i.e., on or before October 22, 1979, and before December 31 of each calendar year thereafter. The statute also provides that failure to file such instruments within the time periods prescribed shall be deemed conclusively to constitute an abandonment of the mining claim by the owner. 43 CFR 3833.1-2, 3833.2-1, and 3833.4.

[3] Failure to comply with these requirements is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Lawrence Paul, 63 IBLA 275 (1982); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the recordation requirements of FLPMA rests with appellant, and this Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences. As the Board stated in Lynn Keith, *supra*:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 196, 88 I.D. at 371-72.

Therefore, BLM properly declared appellant's mining claims abandoned and void because evidence of assessment work was not filed with BLM prior to October 22, 1979, pursuant to FLPMA, and 43 CFR 3833.2-1.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

